

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: JAMES BOLLER Kalona, Iowa	ADMINISTRATIVE ORDER NO. 2008-AFO- 37
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TO: James Boller
5663 Cosgrove Road S.W.
Kalona, Iowa 52247

Eldon McAfee, Attorney
Beving, Swanson & Forrest, P.C.
321 East Walnut Street
Des Moines, Iowa 50309

I. SUMMARY

This administrative order (order) requires you to (1) submit a Manure Management Plan (MMP) for your Wellman facility; (2) pay the filing and indemnity fees; (3) pay annual compliance fees for 2007 and 2008; and (4) pay a penalty of \$5,000.00 subject to your appeal rights stated in this order.

Questions regarding this order should be directed to:

Relating to technical requirements:

Jim Sievers, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director, Iowa Dept. of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459, Subchapter III, and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. James Boller owns and operates an animal confinement feeding operation located at 1694 130th Street in rural Wellman, Iowa (SE 1/4, SE 1/4, Section 18, T 77N, R8W, Washington County, Iowa) (hereinafter referred to as the Wellman facility). The operation consists of several hog confinement buildings with a capacity of 1,900 head (760 animal units).

2. On December 31, 2001, DNR Field Office 6 visited one of Mr. Boller's confined feeding operations in response to a complaint at his Jones (Washington County, Wellman, Iowa) and Leachy (Washington County, Kalona, Iowa) facilities. During the visit, Mr. Boller informed DNR Field Office 6 personnel that his Wellman facility had approximately 950 finish hogs. Mr. Boller also stated that the Wellman facility had a MMP. In DNR Field Office 6 letters dated January 2, 2002 and January 14, 2002, Mr. Boller was informed of the MMP regulations and requirements.

3. On March 21, 2003, Mr. Boller was issued Administrative Order No. 2003-AFO-17 (2003 order). The 2003 order was issued for the violations discovered at Mr. Boller's Jones and Leachy facilities. The 2003 order stated that the Wellman facility had approximately 950 finish hogs and that Mr. Boller had informed the DNR that the Wellman facility had a MMP. In Section IV, Paragraph 5, the 2003 order specifically requires Mr. Boller to "comply with all regulations and statutes for feedlot and animal confinement operations." The order required Mr. Boller to pay a penalty of \$5,000; a payment schedule was later established in an amendment to the 2003 order. The penalty was to be paid in full by February 15, 2006. Mr. Boller did not appeal any portion of the 2003 order and the penalty was paid in full on December 2, 2008.

4. On July 20, 2004, DNR Field Office 6 visited the Wellman facility. Mr. Boller stated that the facility had approximately 950 finish hogs, with an animal unit capacity of 380. At the time of the visit, Mr. Boller signed and dated the "MMP Field Questions for Confinement Site" and checked the box that read, "At this time, I do not need an MMP. I have received information outlining the regulations for Manure Management Plan requirements." DNR Field Office 6 personnel left information regarding the MMP requirements.

5. On July 6, 2007, Mr. Boller's attorney submitted a Notice of Self-Audit and Disclosure of Violations pursuant to Iowa Code chapter 455K. In the Disclosure of Violations letter Mr. Boller's attorney stated that Mr. Boller's Wellman facility should have had a MMP, but did not. The reason given by the attorney as to why Mr. Boller did not have a MMP for the Wellman facility was because "the producer has no record of developing a manure management plan or submitting a manure management plan to the Department." The Disclosure of Violations letter stated the violation occurred beginning in 2006. The Disclosure of Violations letter stated the MMP would be filed by January 1, 2008.

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6. On August 15, 2007, the DNR sent Mr. Boller's attorney a letter stating that the disclosure did not meet the requirements of a voluntary disclosure and that the violation did not qualify for immunity from penalties because of the previous administrative order.

7. On September 11, 2007, DNR Field Office 6 issued a Notice of Violation letter to Mr. Boller for failing to submit a MMP for the Wellman facility. The letter stated the matter was being referred for possible further enforcement.

8. In March 2008, DNR Field Office 6 sent a letter to Mr. Boller concerning the status of his MMP submittal. On April 1, 2008, Mr. Boller faxed DNR Field Office 6 a letter stating that he was working on his MMP and that it would be submitted by the end of April. His faxed also stated that the facility had 1,900 finish hogs with an animal unit capacity of 760.

9. To date, Mr. Boller has not submitted a MMP, a filing fee, an indemnity fee, or compliance fees for the Wellman facility.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 459.312(1)"a"(1) and 567 IAC 65.16(1)"b" requires that the owner of a confinement feeding operation constructed or expanded after May 31, 1985, other than a small feeding operation, shall submit a MMP to the DNR. Iowa Code section 459.102(47) defines a "small animal feeding operation" as an operation with an animal unit capacity of five hundred or fewer animal units. This requirement became effective May 12, 1999 and applied retroactively. The Wellman facility has an animal unit capacity of 760 animal units. Mr. Boller has failed to submit a MMP for the Wellman facility since at least 2006. The above facts indicate a violation of this provision.

3. Iowa Code section 459.503 and 567 IAC 65.16(6) requires all persons required to submit a MMP to submit an indemnity fee. The indemnity fee is ten cents per animal unit. Mr. Boller's indemnity fee is \$76.00. The indemnity fee was due when the MMP should have been filed, Mr. Boller continues to delay the payment of this fee.

4. 567 IAC 65.16(3) requires that all persons required to submit a MMP plan to submit an updated MMP and compliance fees on an annual basis. This requirement became effective March 1, 2003. The compliance fee is fifteen cents per animal unit. Mr. Boller should have filed two updated MMPs and fees. The annual compliance fee is \$114.00.

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5. 567 IAC 65.16(7) requires any person submitting an original MMP to also pay to the DNR a MMP filing fee of \$250.00. The filing fee is required to be submitted with the MMP.

6. Iowa Code chapter 455K provides immunity from administrative penalty when a violation is voluntarily disclosed to the DNR. Iowa Code 455K.8(4) and 567 IAC 12.4(1)"b" states the disclosure must not otherwise be required by federal or state law, permit condition, or an order issued by the DNR. The 2003 order was issued to Mr. Boller and it ordered Mr. Boller to "comply with all regulations and statutes for feedlot and animal confinement operations." The violation noted in the disclosure submitted on behalf of Mr. Boller on July 6, 2007 does not qualify for immunity because Mr. Boller was already under order to comply with all regulations and statutes for animal confinement operations. Additionally, the disclosure stated the violation would be corrected by January 1, 2008 with the filing of the MMP. To date, the MMP has not been submitted. Even if the disclosure had been initially approved, the failure to timely file the MMP would have disqualified Mr. Boller from immunity protection.

V. ORDER

THEREFORE, the DNR orders and James Boller agrees to do the following:

1. James Boller shall submit a complete MMP to DNR Field Office 6 for the Wellman facility within 30 days of the date the Director signs this order;
2. James Boller shall pay the filing fee of \$250.00 and the indemnity fee of \$76.00 at the time of the filing of the MMP with DNR Field Office 6;
3. James Boller shall pay past annual compliance fees for the following years 2007 (\$114.00) and 2008 (\$114.00) for a total of \$228.00. The past compliance fees shall be submitted within 30 days of the date the Director signs this order; and
4. James Boller shall pay a penalty of \$5,000.00 within 60 days of the date the Director signs this order.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The

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Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty assessed by this administrative order is \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – The failure of Mr. Boller to comply with the animal feeding operation regulations has allowed him to achieve an economic benefit. Mr. Boller has achieved an economic benefit by delaying the payment of the filing fee, compliance fees, indemnity fee and preparation costs for the MMP for the Wellman facility. Mr. Boller should have filed at least two annual updates, saving \$228.00 in annual compliance fees. These payments have been delayed and Mr. Boller has been able to achieve an economic benefit from delaying the payment of the fees. Mr. Boller has been able to delay preparation costs for the MMP as well as delaying paying the indemnity fee of \$76.00 since at least 2006. Mr. Boller was also able to avoid the cost of MMP recordkeeping and possible operating restrictions since at least 2006. The economic benefit received by Mr. Boller is estimated to be \$500.00.

Gravity – Mr. Boller's failure to obtain a MMP threatens the integrity of the animal feeding and the water quality programs in the state of Iowa. The MMP is a crucial aspect of the DNR's animal feeding operation program. The plan ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure. Additionally, Mr. Boller's Wellman facility has the capacity for 760 animal units and if the manure is not applied properly it could cause environmental harm. Based on the above considerations, \$2,500.00 is assessed for this factor.

Culpability – All animal feeding operation owners and operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operation is subject to DNR's rules. Animal feeding operations are a rapidly growing and changing area of agriculture. Animal feeding operation owners and operators have an obligation to be aware of the regulations that apply to the operation of the facility. On at least two occasions prior to the disclosure of the violation, Mr. Boller was provided copies of the MMP requirements. Additionally, Mr. Boller was required by a previous administrative order to comply with the regulations and statutes for animal feeding operations. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS


Pursuant to Iowa Code section 455B.175 and 567 IAC 7.5(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons

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for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 10 day of
Dec., 2008.

#No File Number; Field Office 6; Kelli Book; Gene Tinker; EPA; VIII.C.1